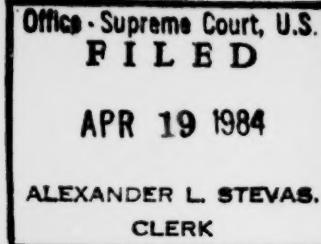


83-1706



NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1983

MARY L. WARDSWORTH

Petitioner

VERSUS

UNITED STATES OF AMERICA

Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GREGORY S. ERWIN

Counsel for Petitioner

P.O. Box 906

Alexandria, LA 71309-0906

(318) 445-8236

75pp



QUESTIONS PRESENTED

- I. Does the failure to comply fully with the technical requirements of the Federal Tort Claims Act necessitate the dismissal of the claim?
- II. Does the filing of an amended Form 95 relate back to the time of the filing of the original Form 95?

**CERTIFICATE REQUIRED BY THE
UNITED STATES SUPREME COURT**

RULE 21.1(b)

The undersigned counsel of record for the petitioner, Mary L. Wardsworth, certifies that the following listed parties have an interest in the outcome of this case:

Mary L. Wardsworth, Plaintiff-Petitioner

Gregory S. Erwin, Attorney for Plaintiff-Petitioner

United States of America, Defendant

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TABLE OF AUTHORITIES

CASES:

1. Allen v. United States, 517 F. 2d 1328 (6th Cir. 1975)
2. Appolo v. United States, 451 F. Supp. 137 (M.D. Pa. 1978)
3. Bialowas v. United States, 443 F. 2d 1047 (3rd Cir. 1971)
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5. Exnicious v. United States, 563 F.2d 418 (10th Cir. 1977)
6. Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231, 79 S.Ct. 760, 3 L.Ed. 2d 770 (1959)
7. Hlavac v. United States, 356 F. Supp. 1274 (N.D. In. 1977)
8. House v. Mine Safety Appliance Co., 573 F. 2d 610 (9th Cir. 1978).
9. Hunter v. United States, 417 F. Supp. 272 (N.D. Calif. 1976)

10. Kornbluth v. Savannah, 398 F. Supp.
1266 (E.D. N.Y. 1975)
11. Koziol v. United States, 507 F. Supp.
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12. Little v. United States, 317 F. Supp.
8 (E.D. Pa. 1970).
13. Mack v. United States Postal Service,
414 F. Supp. 504 (E.D. Mich. 1976)
14. Melo v. United States, 505 F. 2d 1026
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15. Molinar v. United States, 515 F. 2d 246
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17. Williams v. United States, 693 F. 2d
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18. Yuri Yajuma v. United States, 6 F.R.D.
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STATUTES AND REGULATIONS:

1. 28 U.S.C.A. 1254(1)
2. 28 U.S.C.A. 2401(b)
3. 28 U.S.C.A. 2671, et seq.
4. 28 C.F.R. 14.2

RULES:

1. Federal Rules of Civil Procedure,
Rule 15(c)
2. Supreme Court Rule 17, 28 U.S.C.A.

MISCELLANEOUS:

1. 4 C. Wright and A. Miller, Federal
Practice and Procedure, Civil,
Section 1163 (1969)
2. Senate Report No. 1327, 89th Congress,
2d Session 6, reprinted in 1966 U.S.
Code Congressional & Administrative
News, at pp. 2515-2527.

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

MARY L. WARDSWORTH,
PETITIONER

VERSUS

UNITED STATES OF AMERICA,
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

The petitioner, Mary Wardsworth, prays
that a writ of certiorari issue to review
the judgment of the United States Court of
Appeals for the Fifth Circuit entered in
the above case on December 19, 1983.

OPINIONS BELOW

The opinion and order of the District
Court for the Western District of Louisiana

No. 82-1031 has not been officially reported but is contained in the record. (R. 61-64).

The opinion and order of the Court of Appeals for the Fifth Circuit, No. 82-4479, is reported at 721 F. 2d 503 (5th Cir. 1983).

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was made and entered on December 19, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

FEDERAL STATUTES AND FEDERAL RULES

1. 28 U.S.C.A. 1254(1)
2. 28 U.S.C.A. 2401(b)
3. 28 U.S.C.A. 2671, et seq.
4. 28 C.F.R. 14.2
5. Federal Rules of Civil Procedure,
Rule 15(c)
6. Supreme Court Rule 17, 28 U.S.C.A.

STATEMENT OF THE CASE

On November 9, 1979, the petitioner, Mary L. Wardsworth, slipped and fell in the South Park Station Post Office in Alexandria, Louisiana. This fall resulted in injuries to Ms. Wardsworth's back and left hip causing her to be placed under the care of an orthopedist. (R.6).

On November 9, 1981, within two years of her accident, Ms. Wardsworth filed a Form 95 with the United States Post Office, thereby putting them on notice of her injury. Unrepresented by legal counsel at this time and sincerely wishing to be honest and accurate, Ms. Wardsworth filled out line 10 of Form 95 as follows:

"10. E. Personal Injury - Contusion of Hip; D. Total - Unable to diagnosis". (R.6)

On December 23, 1981, after being notified by the postal service that she was required

to submit a "completed" Form 95 and after she consulted with legal counsel, Ms. Wardsworth resubmitted her Form 95, amended to state:

"10. B. Personal Injury - Injury to low back and left hip; D. Total - \$65,000.00." (R.6)

On March 16, 1982, Ms. Wardsworth was notified that her claim had been "denied." On that date she received a letter from Edmund H. Feldman as attorney for the United States Postal Service, which stated:

"There is no further action I can take on this matter, since a government official can neither waive the limitation period nor extend the time for presenting a claim against the government." (R.7)

Thereafter, on May 4, 1982, Mary L. Wardsworth filed suit under the Federal Tort Claims Act (FTCA), 28 U.S.C. Sec. 2671, et seq., in the United States District Court, Western District of Louisiana. (R. 3-5).

The United States moved to dismiss the Complaint or in the alternative, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. (R. 20-21). The District Court granted the Motion to Dismiss and thereby dismissed Ms. Wardsworth's complaint. (R. 32).

On appeal, the United States Court of Appeals for the Fifth Circuit rendered its decision on December 19, 1983, affirming the judgment of the District Court.

ARGUMENT ON LAW AND FACTS

A review on writ of certiorari is not a matter of right, however, it should be granted when there are special and important reasons therefor. U.S. Sup. Ct. Rule 17, 28 U.S.C.A.

There are very important reasons contained within the facts and issues of the instant case to justify granting of writs. This case embraces questions of federal law which are of far-reaching importance in the administration of federal tort claims. The first issue involved concerns the requirement of adherence to the technical provisions of the Federal Tort Claims Act, 28 U.S.C.A. 2671, et seq. Some federal courts of appeals require strict fulfillment of all regulations while other federal courts refuse to dismiss a claimant's demand because of his failure to comply with the technicalities contained in the rules.

The second issue to be reviewed concerns the relation back of an amended Form 95. This is an important question which has not been settled by this Court. The resolution of this issue would prove to be beneficial to future claimants under the FTCA. Further, the Fifth Circuit Court of Appeals' denial of relation back appears to be in contravention of the Federal Rules of Civil Procedure, Rule 15.

A. Requirement of Adherence to Technical Provisions of the Federal Tort Claims Act

The requirements of a claim filed pursuant to the Federal Tort Claim Act are set forth in 28 C.F.R. Sec. 14.2(2):

"For purposes of the provisions of 28 U.S.C. Sec. 2401(b) and 2672, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or

death alleged to have occurred by reason of the incident."

In this case, Ms. Wardsworth presented her claim to the appropriate administrative agency, the United States Postal Service, on November 9, 1981. According to case law and federal practice this filing was within the two year prescriptive period mandated by 28 U.S.C.A. 2401. Yuri Yajuma v. United States, 6 F.R.D. 260 (E.D.N.Y. 1946); 4 C.Wright and A. Miller. Federal Practice and Procedure, Civil, Section 1163 (1969). However, on March 16, 1982, the Postal Department notified Ms. Wardsworth by letter that her claim had been rejected because of her failure to state a "sum certain."

At the time Ms. Wardsworth filed a Standard Form 95, she was unrepresented by legal counsel and according to her understanding of the form, Ms. Wardsworth felt

she had submitted a "completed form". Ms. Wardsworth answered all the questions contained on the Form 95 which she submitted on November 9, 1981. However, on this form in the space where she was supposed to state a "sum certain", Ms. Wardsworth wrote "unable to diagnosis." Ms. Wardsworth at the time was still under the care of a physician, did not know the value of her claim and was merely attempting to be truthful. The statement of the Court in Exnicious v. United States, 563 F. 2d 418 (10th Cir. 1977) seems very appropriate to Ms. Wardsworth's plight:

"The humane purposes of the statute allowing the suit are not served by barring a claim if delay resulted from 'blameless ignorance.'"
Exnicious, at 425.

The United States Fifth Circuit Court of Appeals however dismissed Ms. Wardsworth's claim because she had failed to

fulfill the requirement of stating a "sum certain" on the Form 95 which she filed on November 9, 1981. There are cases which suggest that the failure to specify a "sum certain" is fatal to an injured party's claim. See House v. Mine Safety Appliances Co., 573 F. 2d 610 (9th Cir. 1978); Allen v. United States, 517 F. 2d 1328 (6th Cir. 1975); Melo v. United States, 505 F. 2d 1026 (8th Cir. 1975); Caton v. United States, 495 F. 2d 635 (9th Cir. 1974); Bialowas v. United States, 443 F. 2d 1047 (3rd Cir. 1971); Kornbluth v. Savannah, 398 F. Supp. 1266 (E.D.N.Y. 1975); and Hlavac v. United States, 356 F. Supp. 1274 (N.D. Ill. 1972).

However, other cases have permitted such cases to go forward, emphasizing that the technical defects were promptly cured, even though they may not have been cured within the limitations period. See Williams

v. United States, 693 F. 2d 555 (5th Cir. 1982); Molinar v. United States, 515 F. 2d 246 (5th Cir. 1975); Koziol v. United States 507 F. Supp. 87 (N.D. Ill. 1981); Apollo v. United States, 451 F. Supp. 137 (M.D. Pa. 1978); Hunter v. United States, 417 F. Supp. 272 (N.D. Calif. 1976); Mack v. United States Postal Service, 414 F. Supp. 504 (E.D. Mich. 1976); and Little v. United States, 317 F. Supp. 8 (E.D. Pa. 1970).

Further, the dismissal of Ms. Wardsworth's claim appears to be in direct contravention of the legislative purpose of the Federal Tort Claim Act which is to grant the right of compensation to victims injured through the negligence of governmental agencies. The notice requirements promulgated by Congress in connection with the FTCA are an attempt to protect the Government from the expense of needless

litigation, to give the Government an opportunity for investigation and to allow the Government to respond by settlement or defense. S. Rep. No. 1327, 89th Cong., 2d Sess. 6, reprinted in (1966) U.S. Code Cong. & Admin. News, at 2517.

In promoting the policies of settlement without litigation and prompt presentation of claims, it is not necessary to require a Form 95 which is technically perfect and in conformity with the FTCA as well as all the associated regulations. Further, it would appear that the requiring of an injured person to randomly and arbitrarily select an amount of damages would only serve to frustrate the underlying statutory purposes.

B. Relation Back of an Amended Standard Form 95

On November 9, 1981, Mary Wardsworth filed a Form 95 which omitted a sum certain

from its contents. On December 23, 1981, after being asked by the Postal Service to do so, Ms. Wardsworth filed an amended Form 95 stating the "sum certain" of \$65,000.00. The filing of the first notice put the United States Postal Service on notice of her claim. The filing of the amended form was only an attempt by Ms. Wardsworth to make a technical correction to an already presented claim. Therefore, Ms. Wardsworth's claim should be considered as consisting of both the notice and the amended notice. The failure of the Court to allow the "relation back" would be contrary to both decisions of this Court as to the purpose of and tolling of limitations periods and to the Federal Rules of Civil Procedure regarding the relation back of amendments.

This Court in Order of Railroad Tele-
graphers v. Railway Express Agency, Inc.,

321 U.S. 342, 64 S. Ct. 582, 88 L.Ed. 788
(1944) expressed the purposes of statute
of limitations as follows:

"Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them."

Order of Railroad Telegraphers,
at 348-349.

Further, this Court has held that the mere fact that a statute of limitations is applicable to a federal tort claim does not restrict the federal courts from tolling the prescriptive period under certain circumstances when to do so would not be inconsistent with the legislative purpose of the statute. Glus v. Brooklyn

Eastern District Terminal, 359 U.S. 231,
79 S. Ct. 760, 3 L.Ed. 2d 770 (1959).

To toll the two-years statute of limitations in this case would not be inconsistent with the legislative purpose of the FTCA.

On November 9, 1981, Ms. Wardsworth filed a Standard Form 95 with the United States Postal Service. This filing should have acted as a toll to the prescriptive period because it put the Government on notice that Ms. Wardsworth intended to pursue her tort claim. Less than six weeks later, Ms. Wardsworth amended her original Form 95 to conform with all the technical requirements of the FTCA. To require Ms. Wardsworth to conform at the outset with all these technical requirements would be especially burdensome and harsh to potential claimants.

The rejection of Ms. Wardsworth's amended claim appears to be in direct contravention of the Federal Rules of Civil Procedure, Rule 15. An amendment which introduces no new cause of action or differing defenses ordinarily relates back to the date of the original pleading or commencement of the action. No matter how many amendments may be filed, the necessary legal thrust is that the action was originally brought for the cause ultimately decided. Federal Rules of Civil Procedure, Rule 15. Ms. Wardsworth filed her original claim on November 9, 1981. Her amended Form 95, filed on December 23, 1981, presented no new cause of action or differing defenses but was only a response to the request of the United States Postal Service to so amend her claim. If Ms. Wardsworth's amended claim is not allowed to relate back then it will have the

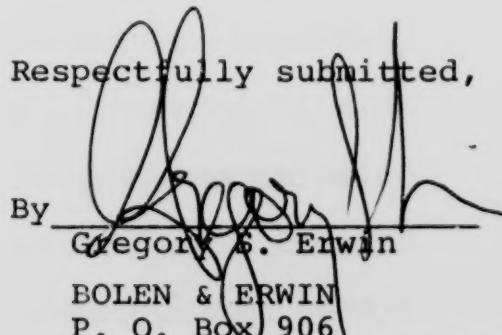
effect of robbing her of the right to sue the Government and it will amount to treating her different from those claimants which are not forced to sue under the FTCA.

CONCLUSION

For the reasons stated herein, petitioner requests that the Supreme Court of the United States grant her writ of certiorari and render a decision on the issues of this case.

Respectfully submitted,

By


Gregory S. Erwin

BOLEN & ERWIN

P. O. Box 906

Alexandria, LA 71309

COUNSEL FOR PETITIONER

APPENDIX

28 U.S.C.A. 1254

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

28 U.S.C.A. 2401(b)

"A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

28 U.S.C.A. 2672

"The head of each Federal agency or his designee, in accordance with regulations, prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent

or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: Provided, That any award, compromise, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee.

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and

appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises or settlements under this chapter.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter."

28 U.S.C.A. 2674

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the

pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof."

28 U.S.C.A. 2675

"(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal Agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counter-claim.

(b) Action under this section shall not be instituted for any sum in

excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages."

28 C.F.R. 14.2(a)

"For purposes of the provisions of 28 U.S.C. Sec. 2401(b) and 2672, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident."

Federal Rules of Civil Procedure
Rule 15(c)

"Relation Back of Amendments.

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The delivery or mailing of process to the United States Attorney, or his designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) hereof with respect to the United States or any agency or officer thereof to be brought into the action as a defendant."

Supreme Court Rules, Rule 17, 28 U.S.C.A.

".1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

- (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
- (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
- (c) When a state court or a federal court of appeals has decided an important question

of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari."

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

MARY L. WARDSWORTH,

Plaintiff-Appellant,

v.

NO. 82-4479

UNITED STATES OF AMERICA,

Defendant-Appellee

Dec. 19, 1983

Appeal from the United States District
Court for the Western District of Louisiana.

Before RUBIN, GARWOOD and JOLLY,
Circuit Judges.

PER CURIAM:

The plaintiff-appellant appeals the
judgment of the United States District
Court for the Western District of
Louisiana dismissing her complaint for
lack of jurisdiction under the Federal

Tort Claims Act (FTCA) for the reason that the appellant did not timely comply with notice requirements relating to the total monetary amount of her claimed injuries. We affirm the dismissal of the complaint.

I.

On November 9, 1979, the appellant, Mary Wardsworth, slipped and fell in the South Park Station Post Office in Alexandria, Louisiana. She injured her back and left hip in the fall.

Although Mrs. Wardsworth alleged in her complaint that she filed a claim with the Postal Service in June 1980, no physical evidence of this claim exists. Furthermore, on appeal she has dropped her contention that this claim satisfied the notice requirements of the FTCA. On November 9, 1981, Mrs. Wardsworth filed a Standard Form 95 with the Postal Service. In the space provided, labelled "AMOUNT OF CLAIM (in dollars)," Mrs.

Wardsworth filled in the words "contusion of hip" in the personal injury column and "unable to diagnosis" in the total damages claimed column. On December 23, 1981, Mrs. Wardsworth filed a photocopy of the form she had previously submitted. On it she typed the additional information "injury to low back and left hip" in the personal injury space and "\$65,000.00" in the space for the total amount of her claim.

The Postal Service replied to Mrs. Wardsworth's claim in March 1982, stating that the Postal Service had no authority to pay the damages because Mrs. Wardsworth had failed to submit a claim for a "sum certain" within two years of the accident as required by 28 U.S.C. Sec. 2401(b).

II.

Mrs. Wardsworth filed a complaint in the United States District Court for the Western District of Louisiana, alleging

that she made an appropriate administrative claim in June 1980 and that she supplemented the claim on November 5 and 9, 1981, and December 23, 1981. The Postal Service responded with a Motion to Dismiss or in the Alternative for Summary Judgment, asserting that it had never received any claim for a sum certain prior to December 24, 1981. Mrs. Wardsworth countered that she had repeatedly amended her Standard Form 95 at the request of the Postal Service, but she did not deny that her claim for a specific amount was first made after the two-year period had elapsed. In a responsive affidavit, Mrs. Wardsworth stated that "(a)t no time was she advised by defendant that anything was required of her other than what she presented to the defendant in the form 95 and she at all times complied with all requests made of her by defendant as concerns completing and filing the form 95...." She also

stated that "(a)t no time was it brought to her attention that the form 95 which she filed was deficient and that it was necessary that she supplement same within two (2) years so as to state therein a specific amount as to the damages she had suffered."

The district court found that no genuine issue of material fact had been raised by the pleadings and affidavits, that Mrs. Wardsworth had failed properly to notify the Postal Service of the amount of her claim within the statutory period, and that the figure in the December 24 filing did not "relate back" to the previous filings. The district judge accordingly granted summary judgment for the Postal Service and dismissed the complaint. Mrs. Wardsworth appeals.

III.

- (1) Mrs. Wardsworth continues her

argument on appeal that the amended form she filed on December 24 can be "related back" to her previous claims which were within the two-year period.

We start our discussion by noting that a lawsuit may be brought under the FTCA only after presenting the claim to the appropriate federal agency and receiving a denial of the claim.¹ Under the

1. 28 U.S.C. Sec. 2575(a) (West Supp. 1983 provides:

An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions

authority of 28 U.S.C. Sec. 2672, the Attorney General has promulgated regulations which govern the presentation of administrative claims to federal agencies. Those regulations provide that "a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury or death alleged to have occurred by reason of the incident." 28 C.F.R. Sec. 14.-2(a)(1982). A claim may be amended, but significantly, the right to amend arises

of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim or counterclaim.

only as to a "claim presented in compliance with paragraph (a) of this section...." 28 C.F.R. Sec. 14.2(c) (1982). The statute also provides that claims not presented to the appropriate agency within two years of their accrual are barred. 28 U.S.C. Sec. 2401 (1970).

Federal courts have repeatedly held that the sum certain requirement is a jurisdictional one and that it applies to 28 U.S.C. Secs. 2401 and 2675. Molinar v. United States, 515 F.2d 246 (5th Cir. 1975); Caton v. United States, 495 F.2d 635 (9th Cir. 1974); Avril v. United States, 461 F.2d 1090 (9th Cir. 1972). No particular form of notice is required as long as it "(1) gives the agency written notice of (the) claim sufficient to enable the agency to investigate and (2) places a value on (the) claim." Adams v. United States, 615 F. 2d 284, 289 (5th Cir.), clarified, 622 F.2d 197 (1980).

This circuit, in some recent cases, has been somewhat more lenient than other courts in interpreting the sum certain requirement. In Molinar, *supra*, we held that a plaintiff had stated a sum certain by attaching medical bills and car repair estimates to a letter which described the circumstances of his injury, but which did not itself claim a specific amount of damages. In Williams v. United States, 693 F.2d 555 (5th Cir. 1982), we held that a plaintiff had satisfied the sum certain requirement even though he had directly transmitted no figures to the agency regarding his personal injuries. We found that a state court suit filed against an agency employee, containing an itemized listing of damages, sufficiently notified the agency of the amount of the plaintiff's

claim. In that case, we said that form is not important "as long as the agency is somehow informed of the fact and amount of the claim within the two year period prescribed by Sec. 2401(b)...." 693 F.2d at 557.

Although we are sympathetic to Mrs. Wardsworth's claim that Standard Form 95 provides little, if any, guidance to the claimant required to fill out the form,² we, as a court charged with interpreting and applying the law as we find it, are not at liberty to dispense with the sum certain requirement. We have searched the record in vain for any shred of evidence that Mrs. Wardsworth provided the Postal Service with facts from which

2. We have previously noted the deficiencies of Standard Form 95. See Molinar, 515 F.2d at 249.

it could have estimated the value of her claim. There is no such evidence. The Postal Service knew only that Mrs. Wardsworth slipped and fell, that she suffered a contusion of her left hip and that she had been treated by a doctor on several occasions. It was not possible for the Postal Service to put a value on the claim with such sketchy information.

We note in passing that the fact that Mrs. Wardsworth might have incurred additional expenses after the running of the two-year period does not relieve her from the sum certain requirement. The regulations cited above specifically allow for a completed claim, including the total damages, to be amended at any time prior to final agency action, and 28 U.S.C Sec. 2675(b) provides that a plaintiff may later sue the government for sums in addition to those specified in the administrative claim if they are based on new

evidence or the occurrence of "intervening facts."

(2) The sum certain requirement fulfills important statutory goals. It enables agency administrators to determine whether they have authority to settle claims under 28 U.S.C Sec. 2672 and contributes to efficient handling of claims by agencies. See Adams, 615 F.2d at 288-89. We cannot, as we are asked to do here, excuse a plaintiff entirely from its operation.

The district court was without jurisdiction to entertain this complaint. Its order of dismissal is

AFFIRMED.³

3. Mrs. Wardsworth has mounted no direct attack on the validity of the regulation requiring that a sum certain be stated on Standard Form 95. We therefore express no opinion on that issue. Because, under the regulation, this requirement is indispensable, we see no reason why the Form 95 should not be amended so that it explicitly warns claimants that failure to state

a sum certain within two years will result in forfeiture of their rights. Such a warning would in no way interfere with the agencies' ability to process and settle claims efficiently, and it would undoubtedly help to eliminate the confusion experienced by claimants such as Mrs. Wardsworth.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

MARY L. WARDSWORTH :

-vs- : CIVIL ACTION NO.
82-1031

UNITED STATES OF :
AMERICA

DATED: October 29, 1982

R U L I N G

On November 9, 1979 plaintiff, Mary Wardsworth, slipped and fell while entering the South Park Station Post Office in Alexandria, Louisiana. Plaintiff alleges she filed an administrative claim in June 1980 and supplemented her claim on four later occasions. After considering plaintiff's claim, the Postal Service, on March 16, 1982, informed her that it had been denied. Subsequently, suit was filed in this court on May 4, 1982, under the

Federal Tort Claims Act, hereafter FTCA.
28 U.S.C. Sec. 2671 et seq.

Defendant, United States of America, has filed a Motion to Dismiss or in the Alternative for Summary Judgment. Plaintiff has filed a Motion in Opposition.

28 C.F.R. Sec. 14.2(a) requires a claimant to submit an executed standard form 95 or other written notification of an incident which, inter alia, must contain a claim for money damages in a sum certain. Aeril v. U.S., 461 F. 2d 1090 (9th Cir. 1972); Bialowas v. U.S., 443 F. 2d 1047 (3rd Cir. 1971). The administrative claim must be filed within two years after the cause of action accrues. 28 U.S.C. Sec. 2401 (b). Plaintiff alleges that she filed a claim with the Postal Service in June 1980. Defendant denies receiving such a claim however. Subsequently, plaintiff supplemented her claim on several later occasions. Each time a

new Form 95 was filed, there was not a claim for a sum certain, as required. Finally, on December 24, 1981, the Postal Service received a photocopy of an earlier claim, which now included a sum certain typed in the appropriate space. Accordingly, plaintiff's claim was denied because the applicable statute of limitations had run.

It is plaintiff's contention that the amendment of the Form 95 relates back to the initial filing of the form, which occurred within the two year limitations period. ^{1/} We must determine whether tolling the limitation is consonant with the legislative scheme of the FTCA.

American Pipe & Construction Co. v. Utah,
414 U.S. 538, 94 S. Ct. 756, 38 L.Ed. 2d 713 (1974). The purpose of the claim

1/ 28 U.S.C. Sec. 2401(b)

requirement ^{2/} is to "expedite the fair settlement of tort claims asserted against the United States." Rooney v. U.S., 634 F. 2d 1238, 1242 (9th Cir. 1980); S. No. 1327, 89th Cong.; 2nd Sess. 2, reprinted in (1966) U.S. Code Cong. & Ad. News, pp. 2515, 2516; Caidin v. U.S., 564 F. 2d 284, 286 (9th Cir. 1977). In addition, the filing of a sum certain "facilitates administrative disposition of the claim, since it both allows the agency better to evaluate whether the settlement will require the approval of the Attorney General under 28 U.S.C. Sec. 2672, and provides the agency with the information necessary to act upon it within six months under 28 U.S.C. Sec. 2675(a)"; Molinar v. U.S., 515 F. 2d 246, 249 (5th Cir. 1975).

2/ The claim requirements refers to 28 U.S.C. Sec. 2675(a) which requires exhaustion of administrative remedies before instituting a claim against the United States.

Furthermore, the applicable limitations provision in this case, Sec. 2401(b), serves to encourage prompt presentations of claims. U.S. v. Kubrick, 444 U.S. 111, 100 S. Ct. 352, 62 L.Ed. 2d 259 (1979). Although a two year limitation period may be tolled under appropriate circumstances where to do so would not defeat the purpose of the limitations provision, the facts before us did not present such circumstances. McCormick v. U.S., 680 F. 2d 345 (5th Cir. 1982). Plaintiff's claim was denied because the limitation period had expired before the proper sum certain was included in the Form 95. See Williams v. U.S., 81-1929-M. Plaintiff never denied her failure to include the sum certain in the form. Without the sum certain, the expeditious settlement of tort claims against the United States would not be possible. Therefore, to allow the amendment of the form to relate back to

the initial filing would actually frustrate the purpose of the claim requirement of the FTCA.

The procedures for filing a proper administrative claim are neither burdensome nor unrealistic. Plaintiff was given ample opportunity to supplement her claim within the statutory limitations period. Therefore, our refusal to toll the statute of limitations period in this case, in no way acts as an injustice to the plaintiff.

Because the plaintiff's affidavit raises no genuine issue of material fact, we grant the Government's Motion for Summary Judgment, and hereby dismiss plaintiff's complaint.

DONE AND SIGNED AT Alexandria,
Louisiana, on this the 29th day of
October, 1982.

/s/ Nauman S. Scott

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

MARY L. WARDSWORTH :

-vs- : CIVIL ACTION NO.

UNITED STATES OF : 82-1031

AMERICA

DATED: October 29, 1982

J U D G M E N T

For written reasons assigned this date, it is

ORDERED, ADJUDGED AND DECREED that defendant, United States of America, be dismissed from the suit, with all costs taxed to the plaintiff.

Alexandria, Louisiana, this the
29th day of October, 1982.

/s/ Nauman S. Scott
UNITED STATES DISTRICT JUDGE



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

March 16, 1984

BROUSSARD, BOLTON & HALCOMB
Attorneys at Law
912 Fifth Street
Alexandria, LA 71301

Attention: Mr. Roy S. Halcomb, Jr.

Re: Your Client - Mary L. Wardsworth

D/A - November 9, 1979

Dear Mr. Halcomb:

As I advised you in my letter of March 4, 1982, I requested a check be made to ascertain whether your client had timely submitted any document which I could validly deem to be a claim. I have now received a report back indicating that

there is no record of any such document.

Based on the evidence in file, I conclude that your client, Mary L. Wardsworth, failed to submit within the two-year period allowed by 28 U.S.C. Sec 2401(b), a claim for a sum certain. Therefore, any cause of action which she might otherwise have had is now barred.

There is no further action I can take on this matter, since a government official can neither waive the limitations period, nor extend the time for presenting a claim against the government. Lomax v. United States, 155 F. Supp. 354 (D. Pa. 1954). A federal agency lacks authority to pay, deny, or even consider any claim which is filed after the expiration of the two-year period. Johnson v. United States, 404 F. 2d 22 (5th Cir. 1968); Leeder v. United States, 181 F. Supp. 322 (D. N.J. 1960).

We are, therefore, closing our file on this matter.

Sincerely,

Edmund H. Feldman
Senior Attorney
Claims Division
Law Department

PLAINTIFFS'S EXHIBIT B

STANDARD FORM 95

CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Prepare in ink or typewriter.

Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary.

1. SUBMIT TO:

United States Post Office

Management Sectional Center

Alexandria, Louisiana 71301

2. NAME AND ADDRESS OF CLAIMANT:

(Number, street, city, State and

Zip Code)

(318) 4480507

Mrs. Mary L. Wardsworth

3223 Redwood Drive

Alexandria, Louisiana 71301

3. TYPE OF EMPLOYMENT

MILITARY

CIVILIAN

4. AGE

40

5. MARITAL STATUS

Married

6. NAME AND ADDRESS OF SPOUSE, IF ANY

(Number, street, city, State, and

Zip Code)

Anderson Wardsworth

3223 Redwood Drive

Alexandria, La 71301

7. PLACE OF ACCIDENT (Give city or
town and State; if outside city
limits, indicate mileage or
distance to nearest city or town)

United States Post Office

South Park Station

1724 Bank Dr.

Alex., La.

8. DATE AND DAY OF ACCIDENT:

Nov. 9, 1979

9. TIME (A.M. OR P.M.):

10:30 A.M.

10. AMOUNT OF CLAIM (in dollars):

a. PROPERTY DAMAGE

b. PERSONAL INJURY

Contusion of Hip.

Injury to low back and left
hip.*

c. WRONGFUL DEATH

d. TOTAL

Unable to diagnosis.

\$65,000.00*

11. DESCRIPTION OF ACCIDENT (State
below, in detail, all known facts
and circumstances attending the
damage, injury, or death,
identifying persons, and pro-
perty involved and the cause
thereof)

On November 9, 1979, approximately 10:30 A.M., I slipped and fell backward but landed on my left side to the floor as I entered the South Park Station Post Office. It was raining. There was no mat at the door to prevent the slippage nor a caution sign on the glass door. New floor covering had been installed. There were several customers entering at the same time of the accident. One of whom helped me off the floor. The accident was immediately reported.

12. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)

None

BRIEFLY DESCRIBE KIND AND LOCATION
OF PROPERTY AND NATURE AND EXTENT
OF DAMAGE (See instructions on
reverse side for method of sub-
stantiating claim)

Contusion of the left hip

Rendering follow-up care

Attending Physician

Dr. L. D. Perdue, M.D.

3311 Prescott Rd.

Alexandria, LA.

(318) 487-9851

Many visits made

13. PERSONAL INJURY:

STATE NATURE AND EXTENT OF INJURY
WHICH FORMS THE BASIS OF THIS
CLAIM

In much pain and embrassment, I
was finally escorted to the
emergency room by the Postal
Claim Adjuster to the Cabrini

Hospital. A disposition was taken by the Adjuster while waiting for Dr. L. D. Perdue. This should be on file.

14. WITNESSES:

NAME

Unable to provide:

Did not secure names from any of the customers.

ADDRESS (Number, street, city,
State, and Zip Code)

I CERTIFY THAT THE AMOUNT OF CLAIM
COVERS ONLY DAMAGES AND INJURIES
CAUSED BY THE ACCIDENT ABOVE AND
AGREE TO ACCEPT SAID AMOUNT IN FULL
SATISFACTION AND FINAL SETTLEMENT OF
THIS CLAIM

15. SIGNATURE OF CLAIMANT (This
signature should be used in all
future correspondence)

/s/ Mrs. Mary L. Wardsworth

16. DATE OF CLAIM:

1st submitted June, 1980

2nd Submitted Nov. 5, 1981

3rd Submitted Nov. 9, 1981

4th submitted 12-23-81*

CIVIL PENALTY FOR PRESENTING FRAUDULENT

CLAIM

The claimant shall forfeit and pay to the United States the sum of \$2,000. plus double the amount of damages sustained by the United States. (See R.S. Sec. 3490,5438;31 U.S.C. 231.)

CRIMINAL PENALTY FOR PRESENTING

FRAUDULENT CLAIM OR MAKING FALSE

STATEMENTS

Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 62 Stat. 698,749; 18 U.S.C. 287,1001.)

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. 14.3.

B. Principal Purpose:

The information requested is to be used in evaluating claims.

C. Routine Use:

See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. Effect of Failure to Respond:

statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically reparable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

Any further instructions or information necessary in the preparation of your claim will be furnished, upon request, by the

office indicated in item #1 on the reverse side.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid".

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

17. DO YOU CARRY ACCIDENT INSURANCE?

_____ YES, IF YES, GIVE NAME AND
ADDRESS OF INSURANCE COMPANY
(Number, street, city, State,
and Zip Code) AND POLICY NUMBER.

✓ NO

18. HAVE YOU FILED CLAIM ON YOUR
INSURANCE CARRIER IN THIS INSTANCE,
AND IF SO, IS IT FULL COVERAGE OR
DEDUCTIBLE?

None

19. IF DEDUCTIBLE, STATE AMOUNT

None

20. IF CLAIM HAS BEEN FILED WITH YOUR
CARRIER, WHAT ACTION HAS YOUR
INSURER TAKEN OR PROPOSES TO
TAKE WITH REFERENCE TO YOUR
CLAIM? (It is necessary that you
ascertain these facts)

None

21. DO YOU CARRY PUBLIC LIABILITY AND
PROPERTY DAMAGE INSURANCE?

____ YES, IF YES, GIVE NAME AND
ADDRESS OF INSURANCE CARRIER
(Number, street, city, State, and
Zip Code) ✓ NO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

MARY L. WARDSWORTH *
(Plaintiff)

VERSUS * CIVIL ACTION
NO. 82-1031
UNITED STATES OF *
AMERICA *
(Defendant) FILED: May 4, 1982

COMPLAINT UNDER THE FEDERAL
TORT CLAIMS ACT

TO THE HONORABLE UNITED STATES DISTRICT
COURT IN AND FOR THE WESTERN DISTRICT OF
LOUISIANA, ALEXANDRIA DIVISION:

The complaint of MARY L. WARDSWORTH respectfully represents that:

I.

Plaintiff is a citizen and resident of full age of Rapides Parish, Louisiana, the same being within the geographical

jurisdiction of this Honorable Court.

II.

Plaintiff brings this action against defendant, United States of America, under provisions of the Federal Tort Claims Act, 28 U.S.C. 2671, et seq.

III.

On or about November 9, 1979, plaintiff entered the Post Office located at South Park Station, 1724 Bank Drive, Alexandria Rapides Parish, Louisiana, to mail several letters. Immediately after entering the Post Office plaintiff slipped and fell. What caused plaintiff to fall was an accumulation of water just inside the doorway where she had entered defendant's premises. At the time of the accident there was no mat located inside the doorway to prevent such an accumulation of water nor was there a warning sign present to warn plaintiff and others entering the

Post Office that the floor was wet and slippery. It is plaintiff's understanding that since her accident a door mat has been put in place just inside the door and a sign has been entered to warn patrons that the floor is wet when slippery.

IV.

At all times pertinent, the above Post Office was under the control of and was being operated by the United States Postal Service, a federal agency of the defendant.

V.

As a result of the above accident plaintiff suffered a serious injury to her low back and left hip as well as other injuries to various parts of her body. Because of the injuries suffered by plaintiff she has been required to undergo medical treatment in the past and is continuing to receive

medical treatment at the present time which treatment is anticipated to continue for an indefinite period of time in the future.

VI.

The aforesaid accident and resulting injuries and damage to plaintiff were solely and proximately due to the gross negligence and/or fault of defendant, its agents, servants and employees, all to plaintiff's damage in the sum of SIXTY-FIVE THOUSAND AND NO/100 (\$65,000.00) DOLLARS.

VII.

Plaintiff made due administrative claim on account of said accident in June of 1980. Thereafter plaintiff supplemented her initial claim on the following dates: November 5, 1981; November 9, 1981; and, December 23, 1981. A copy of Standard Form 95 was submitted by plaintiff, marked "Plaintiff's Exhibit A", and is annexed hereto and made a part hereof. Said

claim was administratively denied by letter to undersigned counsel dated March 16, 1982. A copy of this letter, marked "Plaintiff's Exhibit B", is also annexed hereto and made a part hereof.

WHEREFORE, PLAINTIFF PRAYS for judgment against defendant in the sum of SIXTY-FIVE THOUSAND AND NO/100 (\$65,000.00) DOLLARS, together with legal interest thereon from date of judicial demand until paid plus payment of all costs of these proceedings.

BROUSSARD, BOLTON & HALCOMB

BY: /s/ Roy S. Halcomb, Jr.
ROY S. HALCOMB, JR.
912 Fifth Street
Post Office Box 1311
Alexandria, Louisiana 71301

ATTORNEYS FOR PLAINTIFF,
MARY L. WARDSWORTH

Office - Supreme Court, U.S.
FILED
JUN 20 1984
ALEXANDER L. STEVENS
CLERK

No. 83-1706

In the Supreme Court of the United States

OCTOBER TERM, 1983

MARY L. WARDSWORTH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION

REX E. LEE

Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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In the Supreme Court of the United States
OCTOBER TERM, 1983

No. 83-1706

MARY L. WARDSWORTH, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

Petitioner contends that the court of appeals erred in affirming the dismissal of her complaint under the Federal Tort Claims Act because she failed to file an administrative claim containing a "sum certain" within two years of her accident, as required by 28 U.S.C. 2401(b) and 28 C.F.R. 14.2(a).¹

¹28 U.S.C. 2401(b) provides in pertinent part:

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues * * *.

28 C.F.R. 14.2(a) provides (emphasis added):

For purposes of the provisions of 28 U.S.C. 2401(b) and 2672, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written

1. On November 9, 1979, petitioner apparently injured her back and hip when she slipped and fell inside of the South Park Station Post Office in Alexandria, Louisiana (Pet. App. 2a). In November 1981, within the two year statute of limitations period, petitioner filed a Standard Form 95 with the Postal Service seeking to recover for her personal injuries. Next to the question "AMOUNT OF CLAIM (in dollars)," she answered "contusion of hip" in the personal injury column and "unable to diagnosis" in the total damages claimed column (Pet. App. 2a-3a).

After being notified by the Postal Service that she had failed to complete Form 95 correctly, petitioner filed a new Form 95 on December 23, 1981, changing her answer in the personal injury column to "Injury to low back and left hip," and changing her answer in the total damages column to "\$65,000" (Pet. App. 26a). On March 16, 1982, the Postal Service finally denied petitioner's claim (*id.* at 21a-23a). The agency explained that it had no authority to pay the damages since petitioner had failed to submit a claim for a "sum certain" within two years of the accident, as required by 28 U.S.C. 2401(b) and 28 C.F.R. 14.2 (Pet. App. 21a-22a).

2. Petitioner then filed suit against the United States under the Tort Claims Act, 28 U.S.C. 1346(b) and 2671 *et seq.*, in the United States District Court for the Western District of Louisiana, seeking to recover for her personal injuries. The district court granted the government's motion to dismiss the complaint (Pet. App. 16a-20a). The court held first that petitioner had failed to apprise the Postal Service of her claim with the specificity required by 28 C.F.R. 14.2 (Pet. App. 15a-16a). Second, the court held that petitioner's December 1981 claim could not be deemed

notification of an incident, accompanied by a claim for money damages in a *sum certain* for injury to or loss of property, personal injury or death alleged to have occurred by reason of the incident.

to relate back to the earlier claim, because to do so would frustrate the legislative intent to encourage prompt presentation of tort claims against the United States (*id.* at 18a).

The court of appeals affirmed (Pet. App. 1a-13a; 721 F.2d 503). The court of appeals agreed with the district court that petitioner's failure to include a "sum certain" in her initial claim for benefits mandated dismissal of her suit (Pet. App. 8a). The court also held that the subsequent filing outside the two year limitations period could not cure the jurisdictional defect (*id.* at 7a-8a).

3. Petitioner argues (Pet. 11-21) that failure to comply with the technical requirements of the Federal Tort Claims Act should not deprive parties of their day in court. Although she does not contest the validity of the "sum certain" requirement prescribed in 28 C.F.R. 14.2, petitioner contends that it should be liberally construed so as to preserve the rights of plaintiffs injured by the government's negligence, so long as they have put the government on notice of their claim (Pet. 11-16). Finally, she argues that the subsequent filing of a claim that included a specific damages amount should "relate back" to her initial filing and thus satisfy the "sum certain" requirement (Pet. 16-21). Petitioner's arguments do not warrant review by this Court.

a. The courts of appeals are in complete agreement that failure to satisfy the "sum certain" requirement in 28 C.F.R. 14.2 is jurisdictional. See, e.g., *Keene Corp. v. United States*, 700 F.2d 836, 842 (2d Cir. 1983), cert. denied, No. 82-1836 (Oct. 3, 1983); *House v. Mine Safety Appliances Co.*, 573 F.2d 610 (9th Cir. 1978); *Allen v. United States*, 517 F.2d 1328 (6th Cir. 1975); *Melo v. United States*, 505 F.2d 1026 (8th Cir. 1974); *Bialowas v. United States*, 443 F.2d 1047 (3d Cir. 1971). See also *Warren v. U.S. Dep't of Interior Bureau of Land Management*, 724 F.2d 776, 780

(9th Cir. 1984) (en banc). As the court of appeals explained, the sum certain requirement independently "fulfills important statutory goals. It enables agency administrators to determine whether they have authority to settle claims under 28 U.S.C. Sec. 2672 and contributes to efficient handling of claims by agencies" (Pet. App. 12a). See *Adams v. United States*, 615 F.2d 284, 285-288 (5th Cir. 1980). Thus, notice of the mere existence of a claim is not sufficient to satisfy the regulatory purpose.

Nor is there any dispute that the November 1981 claim application petitioner submitted to the Postal Service failed to satisfy the "sum certain" requirement. Petitioner's ambiguous allegation that total damages amounted to "unable to diagnosis" wholly failed to apprise the agency of the claim's magnitude. The court of appeals, which recognized that it has construed the "sum certain" requirement liberally in other cases (Pet. App. 9a),² found no way to avoid the conclusion that petitioner had completely failed to put the agency on notice of the extent of her claim.

b. Nor is there any legal support for petitioner's "relation back" argument. Petitioner relies (Pet. 16-21) primarily on Fed. R. Civ. P. 15(c). But the Federal Rules of Civil Procedure apply only "in the United States district courts in all suits of a civil nature," Fed. R. Civ. P. 1, and therefore the relation back doctrine in Rule 15(c) has no application to an administrative agency's handling of a tort claim.

The Attorney General has adopted regulations that provide for amending administrative tort claims. 28 C.F.R. 14.2(c). But, consistent with the statute, amendment of a

²See, e.g., *Martinez v. United States*, 728 F.2d 694 (5th Cir. 1984) (claim filed with sum certain specified as "in excess of \$100,000"); *Molinar v. United States*, 515 F.2d 246 (5th Cir. 1975) (claim with medical bills attached). See also *Erxleben v. United States*, 668 F.2d 268 (7th Cir. 1981).

claim after the two year limitations period is permitted only if the "claim presented [is] in compliance with paragraph (a) of this section," which requires that the claim include a sum certain for damages. See note 1, *supra*. Thus, there is no basis for allowing petitioner's later claim to relate back to the earlier filing.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JUNE 1984

DOJ-1984-06